

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1710 – HB 1749

March 27, 2018

SUMMARY OF ORIGINAL BILL: Enacts the Medical Cannabis Act (the Act), which legalizes and decriminalizes the possession, consumption, cultivation, processing, purchase, transportation and sale of medical cannabis and every compound, manufacture, salt, derivative, mixture, or preparation of the plant to any qualifying patient who has been assessed by a medical care practitioner as having a debilitating medical condition and has successfully applied for a medical registry identification card.

Defines “medical cannabis establishment” (MCE), “cultivation facility,” “testing facility,” “dispensary,” “allowable amount,” “authorized form of cannabis,” “bona fide practitioner-patient relationship,” “cannabis,” “cannabis product,” “cardholder,” “commission,” “community facility,” “debilitating medical condition,” “designated caregiver,” “disqualifying felony offense,” “enclosed, locked facility,” “establishment agent,” “establishment agent registration card,” “healthcare facility,” “license,” “medical use,” “nonresident card,” “nonresident cardholder,” “practitioner,” “processing facility,” “qualified pharmacist,” “qualifying patient,” “registry identification card,” “THC,” “wholesaler,” and “written certification.”

Establishes that the term “marijuana” does not include oil containing the substance cannabidiol, with less than 0.9 percent of tetrahydrocannabinol.

Creates the Medical Cannabis Commission (the Commission). The Commission shall have nine members. The Commissioner of the Department of Health is required to call the first meeting of the Commission. Members of the Commission shall receive \$6,000 per year, paid in monthly installments, and shall be reimbursed for their actual and necessary expenses, including travel expenses. Requires the Commission to appoint a director and authorizes the Commission to employ an assistant director, a chief law enforcement officer, and is further authorized, upon consent of the governor, to employ attorneys, inspectors, agents, officers, and clerical assistance as may be necessary. Establishes that the director, assistant director, and chief law enforcement shall be reimbursed for travel expenses.

Requires the Commission to: create, receive, review and approve applications for medical cannabis establishments (MCEs); establish a schedule of fees for application, and initial and renewal licenses for all medical cannabis establishments (MCE), including wholesalers, MCE agents, including volunteers, and qualified pharmacists, such that the fees in aggregate shall not exceed all costs incurred by Commission in administering the state’s medical cannabis program by no more than 20 percent; creates a website that lists the states or jurisdiction which Tennessee grants reciprocity for nonresident registration cards. All fees authorized and collected pursuant to the Act shall be paid into the General Fund and credited to a separate account for the Commission. Establishes that it is the General Assembly’s intent that such fund shall be used

solely for implementation and enforcement of the Act; however, additional funds may be appropriated to the Commission during the first year of its operation to assist with initial expenses. Requires the Commission to strive to remain a ratio of at least one cultivation facility for every five dispensaries, to ensure that the number of each type of MCE is sufficient to adequately serve the needs of qualifying patients, and to consider the number of MCEs the Commission can effectively regulate in ensuring compliance with the Act. Once a year, the Commission must accept applications for licenses to operate MCEs and the Commission must publish on its website the dates such applications will be accepted.

Requires the Tennessee Bureau of Investigation (TBI) to conduct criminal history record checks using fingerprints provided by establishment agents at the time of application. If no disqualifying record is identified, TBI is then required to send the fingerprints to the Federal Bureau of Investigation (FBI) for a criminal history record check.

Establishes that sales of medical cannabis are subject to a 5 percent state sales tax and a 2 percent local sales tax. Establishes the following rates determining allocation of the 5 percent state sales tax revenue collections:

- 10 percent to the TBI;
- 5 percent to sheriffs' offices throughout the state to be used for drug training, including training related to the Act;
- 5 percent to police departments throughout the state to be used for drug training, including training related to the Act;
- 15 percent to the Department of Intellectual and Developmental Disabilities (DIDD);
- 20 percent to the Department of Mental Health and Substance Abuse Services (DMHSAS);
- 20 percent to the Department of Education (DOE) for kindergarten through grade twelve (K-12) education purposes;
- 15 percent to the account in the General Fund, pursuant to Tenn. Code Ann. § 16-22-109(e)(4) established for the exclusive use of the DMHSAS to assist existing veterans treatment court programs and to create and establish additional veterans treatment court programs; and
- 10 percent to the drug treatment court program resources fund to be administered by the DMHSAS, in accordance with Tenn. Code Ann. § 16-22-110, to support drug court treatment programs.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue - \$13,100/FY18-19/General Fund
\$1,820,500/FY19-20/General Fund
\$2,727,300/FY20-21/General Fund
\$3,628,300/FY21-22 and Subsequent Years/General Fund

\$217,000/FY18-19/Medical Cannabis Commission
\$281,900/FY19-20/Medical Cannabis Commission
\$369,800/FY20-21/Medical Cannabis Commission

\$361,200/FY21-22/Medical Cannabis Commission
\$361,700/FY22-23 and Subsequent Years/
Medical Cannabis Commission

\$400/FY18-19/Department of State
\$200/FY19-20/Department of State
\$200/FY20-21/Department of State
Not Significant/FY21-22 and Subsequent Years/
Department of State

\$48,500/FY18-19/TBI
\$952,900/FY19-20/TBI
\$1,416,700/FY20-21/TBI
\$1,859,000/FY21-22/TBI
\$1,857,100/FY22-23 and Subsequent Years/TBI

\$1,391,600/FY19-20/Office of Criminal Justice Programs
\$2,087,400/FY20-21/Office of Criminal Justice Programs
\$2,783,100/FY21-22 and Subsequent Years/
Office of Criminal Justice Programs

\$927,700/FY19-20/Drug Court Treatment Programs
\$1,391,600/FY20-21/Drug Court Treatment Programs
\$1,855,400/FY21-22 and Subsequent Years/
Drug Court Treatment Programs

\$1,391,600/FY19-20/Department of Intellectual and
Developmental Disabilities
\$2,087,400/FY20-21/Department of Intellectual and
Developmental Disabilities
\$2,783,100/FY21-22 and Subsequent Years/
Department of Intellectual and
Developmental Disabilities

\$1,855,400/FY19-20/Department of Mental Health and
Substance Abuse Services
\$2,783,200/FY20-21/Department of Mental Health and
Substance Abuse Services
\$3,710,900/FY21-22 and Subsequent Years/
Department of Mental Health and
Substance Abuse Services

\$1,855,400/FY19-20/Department of Education
\$2,783,200/FY20-21/Department of Education
\$3,710,900/FY21-22 and Subsequent Years/
Department of Education

Increase State Expenditures - \$74,800/FY19-20/General Fund
\$72,000/FY20-21 and Subsequent Years/General Fund

\$168,000/FY18-19/Medical Cannabis Commission
\$335,900/FY19-20 and Subsequent Years/
Medical Cannabis Commission

\$74,200/FY18-19/Board of Pharmacy
\$129,900/FY19-20 and Subsequent Years/
Board of Pharmacy

\$30,700/FY18-19/TBI
\$15,900/FY19-20/TBI
\$15,900/FY20-21/TBI
\$2,300/FY21-22/TBI
\$1,000/FY22-23 and Subsequent Years/TBI

Decrease State Expenditures - \$2,463,800 Incarceration*

Increase Local Revenue - \$4,638,600/FY19-20
\$6,957,900/FY20-21
\$9,277,200/FY21-22 and Subsequent Years

Other Fiscal Impact – The Board of Pharmacy is required to be self-supporting over any two-year period. The Board had an annual surplus of \$885,058 in FY15-16, an annual surplus of \$620,117 in FY16-17, and a cumulative reserve balance of \$2,601,038 on June 30, 2017.

SUMMARY OF AMENDMENTS (015689, 016151): Amendment 015689 deletes all language after the enacting clause.

Creates an exemption to the penalties contained in Tenn. Code Ann. §§ 39-17-417 and 39-17-418, for possession of a controlled substance. This exemption applies to any person who has been diagnosed with any of the debilitating medical conditions specified in the legislation, and who is in possession of marijuana, with proof of a legal order of recommendation, in a labeled container and in one or more of the following forms: ointment, lotion, transdermal patch, suppository, nasal spray, tincture, oil or capsule. Prohibits such person from possessing marijuana in an amount that exceeds a one-month supply of individual doses. This exemption extends to caregivers of such persons possessing proof of having a debilitating medical condition.

Expands the medical conditions allowing a person to obtain cannabis oil with less than 0.9 percent of tetrahydrocannabinol, where such oil is exempt from the definition of “marijuana” under Tenn. Code Ann. § 39-17-402(16).

Deletes an expiration provision that would have sunset the current program allowing a four-year public or private institution of higher education, certified by the Drug Enforcement Administration, to use cannabis oil containing less than 0.6 percent tetrahydrocannabinol for clinical research studies.

Amendment 016151 removes severe chronic pain and severe nausea from the list of chronic or debilitating diseases or medical conditions for which a diagnosis would authorize a doctor to prescribe the use of marijuana for therapeutic or palliative relief.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

NOT SIGNIFICANT

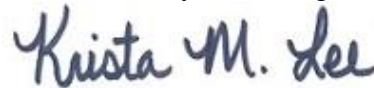
Assumptions for the bill as amended:

- Public Chapter 936 of 2014 exempted cannabis oil containing less than 0.9 percent tetrahydrocannabinol from the definition of “marijuana” under Tenn. Code Ann. § 39-17-402(16) when the oil is manufactured, processed, transferred, dispensed, or possessed by a four-year public institution of higher education located in Putnam County as part of a clinical research study on the treatment of intractable seizures.
- Public Chapter 936 was currently set to expire on June 30, 2018.
- The fiscal note for Public Chapter 936 estimated the impact as “NOT SIGNIFICANT”.
- Public Chapter 1083 of 2016 broadened the exemption in Public Chapter 936 to include any four-year public or private institution of higher education certified by the Drug Enforcement Administration.
- In addition, Public Chapter 1083 also decreased the concentration of oil, from 0.9 percent tetrahydrocannabinol to 0.6 percent tetrahydrocannabinol that any such public or private university could use in clinical research studies.
- The fiscal note for Public Chapter 1083 estimated the impact as “NOT SIGNIFICANT”.
- Broadening the exemption to all public institutions of higher education in Tennessee was estimated to not significantly decrease incarceration costs or significantly impact the caseloads of the courts, district attorneys, or public defenders.
- This legislation will continue the exemption provided to public and private universities, effectively forestalling the expiration provision provided in Public Chapter 936.
- This legislation authorizes persons who have been diagnosed with a qualifying debilitating condition and retain proof of a legal order of recommendation, to legally possess certain forms of marijuana in an amount not to exceed a one-month supply of individual doses. This authorization also extends to the patient’s caregivers.
- The legislation defines a legal proof of recommendation as, but not limited to, a valid marijuana card issued by the person’s state of residence for a debilitating medical condition.

- It is assumed that a recommendation from a doctor that marijuana would provide a therapeutic or palliative relief will also be viable legal proof of recommendation, effectively allowing any such person with a debilitating medical condition to acquire such oil from another state that has legalized the manufacturing and processing of such forms of marijuana as described in the legislation.
- It is unknown how many Tennessee residents or residents of another state, who have retained legal proof of having a debilitating medical condition, will acquire a form of marijuana and use it for medical reasons.
- It is assumed that most Tennessee residents will not be able to acquire the forms of marijuana provided in this legislation, as the companies in states which manufacture such marijuana products would not feel legally justified in distributing its products to Tennessee; thus, Tennessee residents would likely need to travel to such states and bring such products back to Tennessee.
- It is assumed that most Tennessee residents with debilitating medical conditions will not be able to readily travel and acquire the forms of marijuana provided in this legislation; therefore, this legislation is estimated to have no significant impact upon incarceration costs incurred by state or local government.
- This legislation will have no significant impact upon the operations of the Department of Correction, Administrative Office of the Courts, District Attorneys General Conference, and District Public Defenders Conference.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

/jdb